IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.6.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.581 of 2006

H.Vasanthakumar .. Petitioner/Appellant/
Respondent (Tenant)

vs.

S.Subash .. Respondent/Respondent/
Petitioner (Landlord)

Revision Petition filed against the judgment dated 1.2.2006 made in R.C.A.No.754/2001, on the file of the VIII Small Causes Court, Chennai, confirming the order dated 9.10.2001 made in R.C.O.P.No.517/1999, on the file of the XII Small Causes Court, Chennai.

For Petitioner : Mr.T.V.Ramanujam,
Senior Counsel, for
Mr.Sivasuyambu.

For Respondent : Mr.AR.L.Sundaresan,
Senior Counsel, for
Mr.N.V.R.Suresh.

ORDER:

The unsuccessful tenant before both the authorities below is the revision petitioner herein. The respondent/landlord filed RCOP No.517/1999 under Sec.10(3)(c) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter called as 'the Act') for an order of eviction directing the revision petitioner to vacate and deliver vacant possession to the respondent herein of the shop portion in premises bearing Door No.20, Arcot Road, Kodambakkam, Chennai.24.

2. The respondent/landlord stated in the RCOP that the shop on the eastern side adjacent to the shop occupied by the revision petitioner is in the landlord's possession where he was originally having his medical shop. In November 1997, the son of the respondent started a departmental stores in a portion of the

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medical shop and as such both the business, namely, the medical shop and the departmental stores are carried on in the same portion. In due course of time, the departmental stores business developed considerably and more stock of different varieties were to be kept in the shop and due to lack of space, the goods are stored on the floor resulting in hampering the movement of the sales people as well as the customers. As the shop in the occupation of the revision petitioner and the respondent are being separated only by a wall, the respondent/landlord could add the same to his shop by removing the wall. Therefore, the landlord filed the RCOP for eviction as he bonafidely required the shop in the occupation of the tenant for additional accommodation.

3. The revision petitioner as tenant resisted the RCOP by filing a counter wherein it was stated that the landlord's requirement is not bona fide and the revision petitioner would be put to hardship as he invested crores of rupees for the development of the portion in the petition premises. The Rent Controller by order dated 9.10.2001 ordered eviction and the Appellate Authority by order dated 1.2.2006 confirmed the same. Hence the tenant has filed the above revision petition against the concurrent findings of the authorities below.

4. Heard the learned Senior Counsel appearing for the revision petitioner and the learned Senior Counsel appearing for the respondent. I have also perused the documents filed in support of their submissions and the judgments referred to by them.

5. Learned Senior Counsel appearing for the revision petitioner contended that the proviso coming under clause 10(3)(e) of the Act is a mandatory one, according to which, if an application for eviction filed under Sec.10(3)(C) is received, the Rent Controller shall reject the same, if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. According to the learned Senior Counsel appearing for the revision petitioner, this mandatory provision was not at all adhered to by the Rent Controller and in such circumstances the matter is to be remitted for fresh disposal.

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6. In support of his submissions, the learned Senior Counsel appearing for the revision petitioner relied on the following judgments:-

(1) AIR 1998 S.C. 3235 (B.Kandasamy Reddiar v. O.Gomathi Ammal); (2) 1998(I) CTC 679; (3) AIR 2000 Mad. 15 (S.Mohammed Iqubal v. M.padmanabhan) and (4) (2003)2 SCC 320 (Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada.

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7. Per contra, the learned Senior Counsel appearing for the respondent submitted that the proviso with regard to relative hardship was very well followed by the Rent Controller and only after considering the same, eviction was ordered by the Rent Controller which was upheld by the Rent Control Appellate Authority also. The learned Senior counsel submitted that when both the authorities have concurrently rendered a finding against the revision petitioner, that too, after following the mandatory provisions, the same need not be interfered with by this court under Sec.25 of the Act.

8. The learned Senior Counsel for the respondent/landlord relied on the following judgments in support of his contentions:- (1) 1965-II-M.L.J. 236 (Nambudiri v. Edwin Israel); (2) AIR 1982 Mad. 126 (P.Srinivasulu v. M/s.Shanthi Traders); (3) 100 L.W. 258 (Ruth Margaret Gonsalves v. K.T.H.Presses by its Proprietor, Kumar; (4) 1997-1-L.W. 421 (Hotel De-Broadway, etc., v. M/s.Snow White Industrial Corporation,etc.; (5) 1997-II-M.L.J. 496 (Kuthalingam v Jahir Hussain); (6) 1998-2-L.W.341 (Sundaram, P.A. v. Mrs.S.Amaravathy); (7) 1999(I) CTC 221 (Easwara Rao, T. v. N.W.Ansari); (8) 1999-1-L.W.650 (M.P.M.Hameed Ibrahim and another v. V.S.Bagirathan and 3 others); (9) 1999(II) CTC 215 (Sivanraj v. Essakkimuthu); 1999 M.L.J. 233 (Mookkan v. Abdul Rasheeth); (10) (2000)II M.L.J. 196 (Ameena Beebi alias Jamurthu Begum v. Khaja Mohideen); (11)(2000)II M.L.J. 72 (Dakshinamoorthy v. Alphonsea Celestine Kamala Benjamine)and (12) 2005(5) CTC 549 (Vairam v. M.S.R.Nageswaran.

9. First let me consider the judgments cited on behalf of the parties.

10. In AIR 1998 SC 3235 cited supra, the Hon'ble Supreme Court held as follows:-

> "5.Having heard the learned counsel for the appellants and the respondent we are of the view that the factual aspects of the case need not be gone into as these appeals must be allowed for the simple reason that in disposing of the revision petitions the High Court did not at all take into consideration the following proviso, which finds place under clause(e) of Section 10(3) and reads as under:-
>
> "Provided that, in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the

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tenant by granting it will outweigh the advantage to the landlord."

Apart from the fact that while dealing with the question of eviction of a tenant on the ground of requirement of additional accommodation under S.10(3) (c) the consideration of the above proviso is mandatory, in the instant case it is all the more necessary in view of the admitted facts that the respondent has now taken possession of door No.143, earlier occupied by Co-optex, and that she has also initiated execution proceeding for eviction of the tenant of door NO.147-A. As the mandatory requirement of the above quoted proviso has not at all been adverted to by the High Court in the light of the materials already on record and the above subsequent events we set aside the impugned judgment so far as it relates to the three appellants and remand the matter to it for fresh disposal of the three connected revision petitions in accordance with law and in the light of the observations made herein before. Since the matter is long pending the High Court is requested to dispose of the above petitions as expeditiously as possible preferably within a period of six months from the date of communication of this order. There shall be no order as to costs."

11. In the above judgment, the proviso which finds place under clause (e) of Sec.10(3) of the Tamil Nadu Act 18 of 1960 was considered by the Hon'ble Supreme Court and it was held that this provision is mandatory.

12. In 1998(I) CTC 679 cited supra, this court held as follows:-

"15.If it is a case of additional accommodation, naturally, there must be a finding as to whether the hardship of the tenant will outweigh the advantage of the landlord. In regard to the same, the Rent Controller has not entered a finding. But the Appellate Authority has entered a finding, but not taking into account the relevant provisions of law. The evidence in that respect has also not been considered. The Appellate Authority has taken into consideration irrelevant

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factors. It also should not have entered a finding when there was no finding by the Rent Controller.

Under the above circumstances, I am constrained to set aside the judgment of the Appellate Authority and remand the matter to the Rent Controller to enter a finding whether the hardship of the tenant will outweigh the advantage of the landlord. For this limited purpose alone, the matter is remanded. Parties are permitted to adduce evidence on this aspect alone. I hold that the eviction petition is maintainable, and the claim of the landlady is bona fide. The remand is only for the purpose stated above. Rent Controller is directed to pass final orders on that point, after giving reasonable opportunity to both parties to adduce evidence on the limited point. Rent Controller is directed to dispose of the matter before the Court closes for Summer Recess. The revision petition is allowed as indicated above, however, without any order as to costs."

13. In the above case, this court has held that if it is a case of additional accommodation, there must be a finding as to whether the hardship of the tenant will outweigh the advantage of the landlord.

14. AIR 2000 Mad.15 cited supra, this court held as follows:-

"23. All the judgments cited by the learned counsel for the respondent/tenant are pointed to the proviso to Section 10(3)(c) which reads:

"Provided that in the case of an application under Clause (C), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord."

Unless the requirement of the said proviso to be Section are satisfied with proper and adequate evidence in a convicting manner, a petition filed under the relevant section for eviction of the tenant cannot succeed.

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> 24.It is not in controversy that the tenant is running a photo studio in the premises and it is his case that he is eking out his livelihood from out of the said business. Needless to point out the hardships that the tenant will have to undergo in setting up his business in a different place wherein his interests would suffer in a great deal. Besides failing to lead rebuttal evidence in this regard, the landlord in the case in hand has also failed to prove on his part as to what are the advantages that he is going to have much less in proof of how it would outweigh the hardships of the tenant. It is an open case that absolutely no material evidence either by way of documentary evidence or even by strong oral evidence has been placed by the landlord in proof of his case and it would not be unfitting to say that the landlord, at this end has proved to be a miserable failure. There is no wonder that the Rent Control Appellate Authority has rejected the claim of the landlord requiring the premises for his additional accommodation under Section 10(3)(c) of the Act. There is no patent error or perversity in approach seen in the conclusions arrived at by the Rent Control Appellate Authority and I see no valid or tangible reason to interfere with the well considered and well merited judgment and decree passed by the Rent Control Appellate Authority."

15. In the above case also, this court has reiterated that unless the requirements of the proviso to Sec.10(3)(c) are satisfied with proper and adequate evidence in a convincing manner, a petition filed under Sec.10(3)(c) cannot succeed.

16. In (2003)2 SCC 320, the Hon'ble Supreme Court held as follows:-

> "14. The learned counsel for the appellant submitted that the statutory obligation cast on the Court to weigh and assess the comparative hardship has not been properly discharged and that has caused prejudice to the appellant. It was pointed out that the burden which lay on the tenant has been wrongly cast on the appellant as the High

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Court has expressed during the course of its judgment that the appellant has adduced no evidence to show that shops were available in the locality where the tenant could shift on vacating the suit premises. It was also pointed out that the appellate court and the High Court have completely failed to examine whether at least a partial eviction from the tenancy premises could have been ordered. It has come in the evidence that some portions of the ground floor are being used by the respondent as godown and for storing waste material, the area whereof is approximately 300 sq feet as per the site plan available on record. In view of the case for eviction under Section 13(1) (g) having been made out by the landlord, if the tenant would have been directed to be evicted at least from the portions shown as "godown" and "waste material" in the plan which portion of the premises has not been in use for the business of the tenant, the tenant would not have suffered any prejudice or hardship or at least not much thereof. We find merit in the submission so made."

17. In the above case, the Hon'ble Supreme Court has dealt with Bombay Rent Control Act and held that burden of proving greater hardship lies on the tenant and a statutory obligation is cast on the court to weigh and assess the comparative hardship that is caused to the tenant and the landlord.

18. In 1965-II-M.L.J. 236 cited supra, this court held as follows:-

"Mr.Subrmania Iyer, learned Counsel for the petitioner, urged before me that this case is governed by proviso to section 10(3) (c) of the Act, and that the tenant could be evicted only if, under the proviso, the authorities found that, on a consideration of the relative hardship and advantage, the hardship that would be suffered by the landlord would outweigh the inconvenience and hardship that the tenant might be put to. It is true that there is no specific reference to this proviso, but, on a reading of the order of the Rent Controller and District Judge, I am satisfied that the authorities below had undoubtedly in their mind

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the proviso to Section 10(3) (c) and it was only after being satisfied that the hardship that would be caused to the landlord would outweigh the hardship of the tenant, that the claim of the landlord for eviction was upheld. In this connection, I may mention that this point based on the proviso to Section 10(3) (c) was not raised in the Courts below.

In the course of the arguments, learned Counsel for the petitioner relying on a recent judgement of the Supreme Court in *Mangailal v. Sugan Chand, A.I.R. 1965 S.C. 101*, contended that as no notice under Section 106 of the Transfer of Property Act was given to him, the proceeding for eviction was misconceived and liable to be dismissed in limine. He also drew my attention to the order of Srininvasan, J., in W.P.No.1124 of 1963, in which the learned Judge has expressed an opinion that this point which was also raised therein is an important point of law requiring consideration by the Full Bench of this Court. But, as this point was not raised in the Courts below nor even in the grounds of revision, I am not inclined to allow learned Counsel to raise the same at this belated stage. It is a matter for consideration whether the decision of the Supreme Court would apply to a proceeding under the Rent control Act and not suit in ejectment and whether it would apply to a proceeding for eviction when it is not based upon default in the payment of arrears of rent but upon other grounds of eviction provided under the statute. The question as to how far the decision of the Supreme Court referred to earlier which turned upon the peculiar provisions of the Madhya Pradesh Rent Control Act would apply to a proceeding (not a suit) under the Rent control Act requires careful investigation, in the light of the view taken by the Supreme Court in R.M.Paranjype v. A.M.Mali, A.I.R. 1962 S.C. 753, and Gange Dutt Murarka v. Kartik Chandra Das, (1962) 2 S.C.J. 584: (1962 2 M.L.J. (S.C.) 161 : (1962) 2 An.W.R. (S.C.) 161. It is unnecessary to refer to this aspect of the matter in detail, as I am not allowing learned Counsel to raise that point in this revision petition.

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> The revision petition is dismissed. There shall be no order as to costs. The tenant shall have time to vacate till 10th October, 1965. If the tenant does not vacate and hand over possession to the landlord within the time mentioned, the landlord will be entitled to vacate the tenant by taking execution proceedings."

19. In the above judgment, this court held that even though there is no specific reference to the proviso to Sec.10(3)(c) of the Act, on a reading of the order of the Rent Controller, this court satisfied that the authorities below had the proviso in mind and only after being satisfied that the hardship that would be caused to the landlord would outweigh the hardship of the tenant, the claim of the landlord for eviction was upheld.

20. In AIR 1982 Mad. 126 cited supra, this court held as follows:-

> "5. There is the concurrent finding by the courts below that the landlord is in occupation of one of the shops and his requirement for additional accommodation for carrying on the iron and steel business is a bona fide requirement, and the hardship likely to be caused to the tenant will not outweigh the advantage which the landlord might obtain as a result of evicting the tenant. The concurrent finding, based on evidence that the landlord's requirement of the two shops for additional accommodation is a bona fide requirement is a finding which cannot be interfered with by this Court exercising jurisdiction under S.25 of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960. As pointed by the Supreme Court in the decision reported in Sri Rajalakshmi Dyeing Works V. Rangaswami Chettiar, AIR 1980 SC 1253, despite the wide language employed in S.25 of the Act this court cannot interfere with the concurrent finding of fact that the requirement of the landlord for additional accommodation for carrying on his business, is a bona fide one. Accepting those concurrent findings, the claim of the landlord, the respondent in C.R.P.1993 of 1981 has to be upheld and the civil revision petition is liable to be dismissed.

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6. The learned counsel for the landlord, the petitioner in C.R.P. 785 of 1981, contended that the landlord is storing the goods in one of the shops already vacated by the tenant and as pointed out by this court in the decision reported in P.N.Raju Chettiar V. State of Tamil Nadu, 1970-1 Mad LJ 249:(AIR 1970 Mad. 306), carrying on a business consists of series of steps and even if one step is proved, the statutory requirement under S.10 (3) (a) (iii) is satisfied and as the evidence clearly establishes that the landlord is already storing articles in one of the shops in the ground floor vacated by the tenant, he is entitled to an order of eviction. In the instant case, the admitted facts are (1) the landlord is carrying on iron and steel business in a rented premises; (2) prior to the purchase by the petitioner, the first floor was used for the purpose of residence and the ground floor was used for the purpose of business and the petitioner putting the building to the same use, has already occupied the first floor for residential purposes and one of the shops in the ground floor for storing his articles. This Court in the decision reported in P.M.Kuppa Sah V. Rajaram Sah, (1979) 92 Mad LW 165 has pointed out that even if the landlord keeps his things in a portion of the premises and keeps it under his control, by locking it, it is legal possession satisfying the requirements of Sec.10 (3) of the Act. As the landlord is keeping his articles in one of the shops in the ground floor vacated by the tenant, he has already taken the first step for carrying on his business in the ground floor of the petition mentioned premises. As the landlord wants additional accommodation for the purpose of carrying on his iron and steel business and wants the tenants to be evicted from the remaining shops on the ground floor, the requirement of the landlord for additional accommodation is a bona fide one. The tenant may no doubt, be put to some inconvenience by being asked to vacate the premises in his occupation. That will not deprive the landlord of his bona fide right to require additional accommodation and viewed in this light, the

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order of the Rent Controller ordering eviction of the tenant has to be upheld. The learned counsel for the respondent contended that the matter may be remanded back to the Rent Controller for finding out what is the extent of the rented premises in which the landlord is carrying on the iron and steel business and whether the requirement for additional accommodation by vacating the three tenants in occupation of the shops in the ground floor is a bona fide one. As the evidence on record has satisfactorily established that the requirement of the landlord for additional accommodation is a bona fide requirement, it is needless to remand the case to the Rent Controller for fresh consideration of the same issue. In the result C.R.P. 785 of 1981 filed by the landlord is allowed and C.R.P. 1993 of 1981 filed by the tenant stands dismissed. Parties to bear their own costs, Six months' time granted to the tenants to vacate the shops.

21. In the above judgment, this court held that High Court cannot interfere with the concurrent findings of fact that the requirement of the landlord for additional accommodation for carrying on his business is a bona fide one, despite the wide language employed in Sec.25 of the Act. This court further held that tenant's inconvenience will not deprive the landlord of his bona fide right to acquire additional accommodation.

22. In 100 L.W. 258 cited supra, this court held as follows:-

"13. It is then contended that there is no evidence to show that the landlady was carrying on any business. On a review of the evidence, it appears that the appellate Authority had clearly misdirected himself when he allowed himself to be wholly influenced by the use of the word 'business'. It was never the claim of the landlady that she was carrying on any business on a large scale which would necessitate maintenance of any accounts or vouchers which could be produced in court. It is difficult to see what documentary evidence the Appellate Authority expected when facts showed that an old lady was carrying on some sort of activity of preparing pickles and condiments for selling to persons who are known to her-because that is her evidence. Though

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strictly in economic terms, this might be called 'business' which is really an activity to raise some money and in a case where especially no employees are involved and where the so-called production is not of a large scale, it is difficult to see how the activity could be subjected to scrutiny on the basis of absence of vouchers or correspondence. It was not the case of the landlady that she was making bulk purchases of any raw material in respect of which any correspondence would be there. The finding recorded by the Appellate Authority is, in my view, clearly vitiated because of the erroneous approach to the question of the nature of the activity which the landlady was claiming to be carrying out. Her statement shows that she was doing business in home made curry powder, jam and pickles. she has also stated in cross-examination '...People known to me are purchasing from me. I am not issuing any bills..' such activity for making a small money is well known where women without sufficient source of income try to make some money by making small things at home and selling them to their acquaintance or to persons known to them. Strictly speaking, therefore, any insistence on evidence in the form of bills or vouchers in regard to such an activity is not justified.

14.It is undoubtedly true that in the notice which was initially given, the landlady had alleged that she wanted the premises for the business of her son while in the petition she has pleaded that she wanted the premises for her own use. But it has to be remembered that in the very same paragraph in which she has stated that she wanted the premises for her own use, she has also mentioned the fact that her son was unemployed and she needed the shop occupied by the tenant for her own use. Pleadings in such matters cannot be construed with the strictness with which pleadings in civil suits are construed. The case of the landlord or the tenant, as the case may be, has to be read as a whole and on the evidence and the pleadings, there is no doubt in this case that here was a land lady who had the problem

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of an unemployed son on her hand and she was making some additional income by making some small things for the benefit of her acquaintances and selling them. Her desire to have this business done on a bigger scale by taking a shop which belongs to her but occupied by the tenant would clearly go to show that she also wanted the premises for the use of her son for providing him with some source of income."

23. This court in the above case held that any insistence on evidence in the form of bills or vouchers with regard to the activity making money by making small things at home and selling them to known person is not justified. This court further held that pleadings in rent control matters cannot be construed with strictness with which pleadings in the civil suits are construed.

24. In 1997-I-L.W.421 cited supra, this court held as follows:-

"It is clear from S.10(3)(i) of the Act that the Court has to consider (1) the bona fides of the claim of the landlord and (2) it should be satisfied before rejecting an application that the hardship which may be caused to the tenant will outweigh the advantage of the landlord.

Mere inconvenience of the tenant cannot deprive the landlord of his bona fide right to have additional accommodation in the premises.

The problem of getting alternative accommodation cannot be taken as a relevant ground for rejecting the claim of the landlord. Once the landlord's requirement regarding the portion of the premises in question in the occupation of the tenant of his additional accommodation, is bona fide, the fact that the tenant cannot get an alternative accommodation alone, cannot be the basis to reject the landlord's claim.

It is not the object of the provisions of Section 10(3) of the Act to weigh the hardship of the tenant as against the advantage of the landlord on delicate scales giving the benefit of a slight tilt in favour of the tenant. In a proper case where the hardship caused to the

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tenant would be considerable and advantage accruing to the landlord would be little or small, the application can be rejected."

25. IN 1997-II-M.L.J. 496 cited supra, this court held as follows:-

"2. Mr.Sankara Subramaniam, learned counsel for the tenant, the writ petitioner herein, contended that the finding of the appellate authority that the petition schedule premises required by the landlord by way of additional accommodation is wrong and that the appellate authority should have held that the alleged requirement by the landlord is not bona fide. It is further contended that Sec.10(3)(c) of the Act cannot be interfered by the landlord in view of the fact that the petition schedule premises is not a portion of the premises alleged to be in the occupation of the landlord. Therefore, he contends that the appellate authorities should have held that both the premises were of separate door numbers and have separate ingress and egress and therefore the landlord cannot invoke Sec.10(3)(c) of the Act. It is also contended that the appellate authority has failed to consider the hardship that will be caused to the tenants. It is also submitted that even assuming that the requirement of the portion in Door No.30 is bona fide, the same may not be adequate for the landlord either to live there or to carry on any business in the premises. In support of his contention, Mr.Sankara Subramaniam placed very strong reliance on the judgment of the Supreme Court Gangaram V. Shankar Reddy, (1988) 4 S.C.C. 648. Per contra, Mr.C.Selvaraj, learned counsel appearing for the landlord, while reiterating the contentions raised before the appellate authority, by reply, contended that the finding of the appellate authority is purely based on the evidence let in by the landlord and therefore, such a finding is not liable to be interfered with and that the judgment cited by the learned counsel for the tenant reported in Gangaram V. Shankar Reddy, (1988) 4 S.C.C. 648 is not at all applicable to the facts and circumstances of the case and that the same is distinguishable on facts and

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also on law. He also contended that the tenant cannot dictate terms and it is not the concern of the tenant that the building now required by the landlord is inadequate for his occupation. I have factually gone through the affidavit, pleadings and also the evidence let in, both oral and documentary, and also the orders impugned in this civil revision petition. In my opinion, the lower appellate authority has rightly accepted the case of the landlord on the question of bona fide requirement of the premises by way of additional accommodation. It is not in dispute that the landlord is occupying Door No.31 in the very same premises. The appellate authority, on the basis of the evidence let in, both oral and documentary, came to the conclusion that the requirement by the landlord for additional accommodation is bona fide. The finding rendered by the appellate authority, in my opinion, is purely based on facts and also on the basis of the evidence tendered and therefore the said finding is not liable to be interfered with. I shall now deal with the argument of the learned counsel for the petitioner that the landlord cannot invoke Sec.10(3)(c) of the Act in this case in view of the fact that the petition schedule premises is not a part of the premises alleged be in his occupation since both the premises are given separate door numbers and separate ingress and egress. In the Judgment cited and reported in Gangaram V. Shankar Reddy, (1988) 4.S.C.C. 648, the facts are entirely different. That was a case filed by the tenant before the Supreme Court against the verdict of the authorities below under the provisions of the Andhra Pradesh Rent Control Act. In that case, the landlord filed a petition under Sec.10(3) of the Act for eviction of the tenant from the premises bearing No.1-1-250, Chikkapalli, Hyderabad. The landlord, apart from Door No.1-1-250, was also owning the adjoining building bearing No.1-1-249. In the said building, the landlord was running a grocery shop in the ground floor and residing in the second and third floors subsequently constructed by him. On the ground of requirement of additional space for the grocery shop, the landlord sought the eviction

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of the tenant appellant before the Supreme Court. The Rent Controller rejected the petition holding that the leased premises was a separate building and did not form part of the building in which the respondent was carrying on his business. In the appeal preferred by the landlord, the Chief Judge, City Small Cause Court, Hyderabad, took a different view of the matter and held that even though the leased premises had a separate, municipal door number, it can be treated as forming part of the building in the respondent's occupation because both the buildings are owned by the second respondent therein and besides the two buildings are separated only by a single wall. The appellate authority allowed the appeal and ordered eviction of the tenant. The civil revision was filed by the tenant to the High Court did not meet with success and hence he filed an appeal before the Supreme Court. In this case, originally, a row of buildings comprised of Door Nos.1-1-248 to 1-1-251 were owned by one B.Kistiyah and after him by one Rambai. The said Rambai sold the buildings in the row to two different persons The landlord and his brother were the two of such purchasers and they purchased the premises from 1-1-248 and 1-1-249 was allotted to the landlord and premises 1-1-248 was allotted to his brother. After the partition was effected, the landlord constructed two storeys over his building by erecting concrete pillars on both sides of his building. At that time, the premises bearing Door No.1-1-250 was owned by an Advocate who objected the construction for erection of concrete pillars by the respondent. He complained of encroachment by the landlord and eventually the dispute was resolved by the landlord himself purchasing the house from the said advocate namely Door No.1-1-250. After constructing the two floors, the landlord shifted his residence to these floors and utilised the entire ground floor for his business. Therefore, the fact remains that before the building was purchased by the landlord, it was owned by one Mr.Sitaram Rao, Advocate and the landlord was owning only Door No.1-1-249. Such being the case, merely because the landlord had acquired title to Door

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No.1-1-250 also, it can never be stated that the building in the tenancy of the appellant tenant became part and parcel of the landlord's building NO.1-1-249. Similarly, the fact that the two buildings are separated only by a single wall with no intervening space between them does not alter the situation in any manner because the identify of the two separate buildings is not to be judged on the basis of the buildings being separated by a single wall or by two separate walls with intervening space in between them. As pointed out by the Supreme Court, what Sec.10(3)(c) envisages is the oneness of the building and the oneness of the ownership of the two different buildings one occupied by the landlord and the other by the tenant. In the instant case, Door No.29, 30,31, 40, 41, etc., are all owned by the landlord himself. The landlord is admittedly in occupation of Door No.31. The additional accommodation is now sought for Door No.30 which is in the occupation of the tenant. Merely because the two portions Door Nos.30 and 31 are separated only by a single wall, it would not alter the situation in any manner because the identify of the two portions is not to be judged on the basis of the buildings being separated by a single wall or by two separate walls with intervening space in between them. No one can say that the two adjoining buildings bearing different Door Nos., one occupied by the landlord and other by the tenant will make them one and the same building if they are owned by one person and separate building if they are owned by two different persons here it is not the case of the two adjoining buildings bearing different Door Nos. In this case, there is only one building owned by the landlord himself separated only by a single wall. There is no difficulty with regard to the identity of the two portions. Therefore, the judgment cited by the learned counsel for the petitioner reported in Gangaram V. N.Shankar Reddy (1988) 4 S.C.C. 648, in my view, is not applicable to the facts and circumstances of the case and it is distinguished on facts. When the two portions bearing Door Nos.30 & 31 are admittedly in one building and the requirement of the landlord is

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> also bona fide, there can be impediment on the part of the landlord from asking for additional accommodation in the same building. I have already held that the finding of the appellate authority holding that the requirement of the building is bona fide and does not warrant any interference by this Court. As pointed out by the learned counsel for the respondent, it is not for the tenant to dictate terms and to say that the portion now asked for additional accommodation is a inadequate or in sufficient for the purpose of carrying on business or for living purpose. It may be true that because of the order of eviction, the tenant may be put to some hardship. But that cannot be a ground for rejecting the bona fide requirement of the landlord in asking for additional accommodation in the same building."

26. in the above case, this court has reiterated the principle that when the finding of fact by the Appellate Authority is purely based on facts and on the basis evidence rendered, the said finding is not liable to be interfered with under Sec.25 of the Act. This court further held that the minor hardship that will be put to the tenant cannot be a ground for rejecting the bonafide requirement of the landlord in asking for additional accommodation in the same building.

27. In 1998-2-L.W.341 cited supra, this court held as follows:-

> "9.It is the case of the landlord that the tenant is carrying on business like the one which he carries on in the tenanted premises at least in three other places. The tenant in his evidence had admitted it. On going through the materials placed by the landlord as well as the tenant the Rent Controller found that the relative hardship is not definitely in favour of the tenant if an eviction order is passed. If an order of eviction is passed it is not as though the life of the tenant would come to a grinding halt since it is established that he is already carrying on similar business in three other areas. On the other hand, the advantage to which the landlord will be put to if an order of eviction is passed, it is definitely far higher than the relative hardship the tenant may suffer at all, if any.

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Under these circumstances, I find an conclude that the relative hardship, if an order of eviction is passed, is not in favour of the tenant."

28. In the above case, this court has stated that when the tenant is carrying on business at least in three other places, if an order of eviction is passed, it is not as though the life of the tenant would come to a grinding halt.

29. In 1999(I) CTC 221 cited supra, this court held as follows:-

"10. In the present case the petitioner, in the petition filed in R.C.O.P., has set out the hardship in paragraph 5 of the petition. The tenant has set out the relative hardship in paragraph 6 of the counter. In the evidence, the parties have spoken about the relative hardship. Considering the available pleadings and evidence, the Rent Controller found that the hardship which may be caused to the tenant by granting the order of eviction will not outweigh the advantage to the landlord. Though the appellate authority has not given any specific finding about the relative hardship, he has confirmed the findings of the Rent Controller".

"14.Therefore it is clear that at the time when the enquiry in the rent control proceedings went on the hardship and relative hardship was in fact in contemplation between the parties and so there is no bar to the authorities below in looking into the evidence on that aspect. In this case, admittedly, though in the R.C.O.P. the landlord has not explained the relative hardship, the materials are available in the counter and also in the evidence, which have been taken into consideration by the Rent Controller and found that the hardship of the tenant will not outweigh the advantage to the landlord. The Rent Controller has also taken into consideration of the fact which is admitted by the tenant in the R.C.O.P. that he is having a house of his own. The finding of the Rent Controller has been confirmed by the appellate authority. In view of the above, the

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submission of the learned counsel for the petitioner that there is no plea regarding the relative hardship and so the R.C.O.P is not maintainable on the basis of the decision in Krishnaswamy V. Arumugam 1993 (1) M.L.J. 122 cannot be sustained, in view of the decisions of this Court and of the Apex Court."

30. In the above case, this court has observed that even when the landlord has not explained the relative hardship, when the materials are available in the counter and also in the evidence, there is no bar to the authorities below in looking into the evidence on this aspect.

31. In 1999-I-L.W.650 cited supra, this court held as follows:-

"8.The argument of the learned senior counsel for the petitioners that the petition under Section 10(3)(a)(iii) of the Act is not maintainable and only a petition under Section 10(3)(c) of the Act is maintainable, as the landlord is in occupation of a portion of the very same premises, does not appear to be correct, in view of the judgment of the Hon'ble Supreme Court of India referred to above. Even if this argument is correct, yet I am of the opinion that the order of the authorities below cannot be interfered with for more than one reason. Mere quoting a wrong provision of law cannot be a ground to deny the relief to the landlord, if the materials otherwise available on record enables him to get the relief, is too well settled. It is no doubt prove that in the rent control petition the provision of law quoted is only under Section 10 (3) (a) (ii) of the Act and there is no pleading on the ground of additional accommodation as well on the ground of relative hardship. In the counter affidavit of the first respondent, a point has been taken that the petition under Section 10 (3) (c) alone is maintainable and in that event the relative hardship should be gone into. There is also no pleading by the respondent before the Rent Controller on relative hardship. However P.W.1 in his chief examination would state that the premises is required for his business purposes and if the tenant does not vacate, he is likely to suffer

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and the tenant would not have any sufferings at all P.W.1 would further add in his evidence in chief that for want of space, he is storing the birds in the open terrace under asbestos sheet covering and during summer the birds die unable to bear the heat. He would also add that since his business premises is situated interior, womenfolk are not ready to come in. There is no cross examination, at all of P.W.1 on this aspect R.W.1 would state in his evidence that he (R.W.1) has one other shop in the very same high road and that since he is carrying on two businesses, it cannot be said that he is not likely to suffer any hardship, if he is asked to vacate. Therefore, it is clear that there are some materials available on record on relative hardship. Hence, I am of the opinion that though there is no pleading on relative hardship arising on the requirement of additional accommodation, yet there is some evidence on that aspect. I applied my mind to the evidence, as noted above, on relative hardship and in conclusion, I am of the opinion that it is enough to hold that the disadvantage which the landlord is likely to suffer, if an order of eviction is not granted, would out-weigh the advantage that is likely to accrue to the tenant, in that regard. Under these circumstances, I find no merits in this revision and it is accordingly dismissed. No costs. C.M.P.No.12095/95 is closed."

32. In the above judgment also, this court held that even though there is no pleading on relative hardship arising on the requirement of the additional accommodation, when there is some evidence on that aspect, courts can definitely look into it and render its findings.

33. In 1999(II) CTC 215 cited supra, this court has held as follows:-

"18. The next question relates to the relative hardship. Whether the hardship that may be caused to the tenant would outweigh the advantage to the landlord. It is submitted by the learned counsel for the revision petitioner that the authorities below have not considered this aspect at all. No doubt, the Appellate Authority has not dealt with this question.

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Apparently, this was not urged before the Appellate Authority. Even otherwise, it has been held by K.Govindarajan,J. in T.Easwara Rao V. N.E.Ansari (deceased) and six others, 1999 (I) CTC 221 that even if the Appellate Authority had not given a specific finding regarding comparative hardship, while confirming the findings of the Rent Controller, the finding of the Rent Controller that hardship of the tenant will not outweigh the advantage to the landlord is sufficient compliance of the requirement of the section and the order of eviction passed by the authorities cannot be taken exception to."

36. In the instant case, the authorities below have considered all the aspects of the matter and found as a question of fact that the landlord has made out a case for section 10(3)(c) of the Act and having regard to the scope of Section 25 of the Act as held by several decisions of this Court and Supreme Court, there is no warrant for interference under Section 25 of the Act. I have also satisfied myself as to the bona fide nature of the requirement of the landlord. I am also satisfied that the hardship that may be caused to the tenant will not outweigh the advantage that may be caused to the landlord. The authorities below have applied the proper test and there are no manifest errors in the conclusion reached by the authorities below on the basis of the oral and documentary evidence. There is no irregular, illegal or improper exercise of the powers by the Rent Controller and the Appellate Authority. Consequently, it has to be held that there are no merits in the civil revision petition, C.R.P. No.370 of 1999, is liable to be dismissed".

34. In this case, this court has said that even if the Appellate Authority had not given any specific finding regarding comparative hardship, while confirming the findings of the Rent Controller, the finding of the Rent Controller with regard to relative hardship is sufficient compliance to the proviso of Sec.10 (3)(c) of the Act.

35. In 1999-II-M.L.J. 233 cited supra, this court held as follows:-

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"17. That apart, I am unable to agree with the contention of the learned counsel for the revision petitioner that there should be a finding by the authorities as to the relative hardship which may be cause to the tenant by granting a decree of eviction, and that in the absence of such a finding, the orders of eviction of the authorities below are liable to be set aside, inasmuch as this Court is entitled to go through the material evidence available on record, and satisfy itself whether the respondent/landlord is in bona fide requirement of the petition premises for his additional accommodation, of counsel taking note of the fact that it is not the object of the provision of Sec.10(3)(c) of the Act to weigh the hardship of the tenant as against the test of the landlord on delicate scale, giving the benefit of the slight tilt in favour of the tenant as observed by this Court in Hotel De Broadway, etc. V. M/s.Snow White Industrial Corporation, etc., (1997)1 L.W. 421. It cannot be disputed that in the light of the materials available on record, this Court can test the hardship of the tenant in the light of the advantage accruing to the landlord while passing the order of eviction. In the instant case, I find that the revision petitioner has clearly pleaded that he requires the petition premises for his additional accommodation, as he has got six members in his family consisting of himself, his wife, and four children who are growing, and also their marriages are being arranged, and these facts have not been disputed by the revision petitioner/tenant, and therefore, I am satisfies that the orders of eviction of the Court satisfy the test of relative hardship as contemplated under the proviso to Section 10(3)(c) of the Act. Hence, I am obliged to confirm the order of eviction and the revision is, therefore, dismissed."

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36. This court in the above judgment held that it is not the object of the provision of Sec.10(3)(c) of the Act to weigh the hardship of the tenant as against that of the landlord on delicate scale, giving the benefit of the slight tilt in favour of the tenant.

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37. In (2000)II M.L.J. 196 cited supra, this court held as follows:-

> "10.As already noticed, except for the decision of K.A.Thanickkachalam,J. (as the learned Judge then was) the other decisions do not say that the eviction petition has to be thrown out on the ground of want of pleadings. So far as the judgment of K.A.Thanikkachalam, J. is concerned in view of the decision in Hiralal's case, A.I.R. 1993 S.C. 1449, the alleged lack of pleading in the instant case cannot be put against the revision petitioner. Though this decision of the Supreme Court was cited before the Appellate Authority for absolutely no valid reasons, the Appellate Authority has observed that the ratio of the decision of the Supreme Court does not apply to the facts of the present case. In my view, the stress is more on the duty of the authorities under the Act and in fact Ratnam,J. has the learned Judge then was) in P.Annakkili Ammal's case, (1984)1 M.L.J. 340, has referred to this aspect very clearly. The relevant portion has already been extracted. Even in the above judgment P.Annakkili Ammal's case, the learned Judge has concentrated more on the necessary materials in support of the relative hardship. My reading of the relevant provisions is justified will be evident from the decisions of the Supreme Court in B.Kandasamy Reddiar V. O.Gomathi Ammal, (1998) S.C.C. 138 and in J.Jermons V. V.Aliammal and others, (1999) 7 S.C.C. 382, where the Supreme Court with particular reference to Tamil Nadu Act after referring to Proviso to Section 10(3)(e) of the Act held that "the consideration of the proviso is mandatory" In the other decision of the Supreme Court, it has been held as follows:
>
> "The authority who considers the eviction petition under clause (c) of Sec.10(3) of the Act has to record the finding under the provision and in the absence of such a finding the order of eviction cannot be sustained".
>
> Thus, the emphasis is more on the duty of the authorities than on the pleadings and in any event, after the decision of the Supreme Court

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in Hiralal's case, A.I.R. 1993 S.C. 1449, it cannot be held that the specific pleadings regarding comparative hardship is a mandatory requirement. It is therefore unnecessary to refer the matter to a Bench, nor it is necessary to remand and the matter to the Appellate Authority to enter a finding as, according to me, the appellate Authority has also accepted the case of the revision petitioner that the hardship caused to the tenant will not outweigh the advantage to the landlady. Under these circumstances, the decision of the Appellate Authority reversing the eviction order passed by the Rent Controller cannot be sustained. The civil revision petition stands allowed and the order of the Appellate Authority is set aside and that of the Rent Controller restored. The tenant will have six months time to quit and deliver vacant possession subject to his filing an affidavit of undertaking with the usual default clause, within a period of two weeks from today. There will be no order as to costs."

38. In this case, this court observed, after referring to proviso 10(3)(e) of the Act, that the emphasis is more on the duty of the authorities than on the pleadings and the specific pleadings regarding comparative hardship is not a mandatory requirement.

39. In (2000)II M.L.J. 72 cited supra, this court has reiterated the principle that when the landlord seeks eviction on the ground of requirement of additional accommodation, the application is not liable to be rejected merely on the ground of lack of pleadings and vague pleadings.

40. In 2005(5) CTC 549 cited supra, this court has observed that when the appellate authority confirmed the order of eviction without specific finding on relative hardship, it is not a ground to interfere with the same, when the Rent Controller has gone into the aspect of relative hardship and given a finding to that effect.

41. In the above judgments, the following principles have been settled by the Hon'ble Supreme Court and this court:-
(1) The proviso which finds place under clause (e) of Sec.10(3) of the Act is mandatory; (2) In a case of additional accommodation, there must be a finding as to whether the hardship of the tenant will outweigh the advantage of the landlord; (3) Even though the

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courts below may not have specifically referred to the point of relative hardship, if they had in their mind and satisfied that the hardship is in favour of the landlord, the High Court will not interfere in the revision petition; (4) Inconvenience of a tenant will not deprive the landlord of his bona fide right to acquire additional accommodation under Sec.10(3)(c) of the Act; (5) If the concurrent findings are based on evidence that the landlord requirement of additional accommodation was a bona fide one, the same could need not be interfered with by the High Court under Sec.25 of the Act; (6) The pleadings in Rent Control proceedings need not be construed with strictness with which pleadings in civil suits are construed; (7) Insistence of bills and vouchers in small business carried on by the landlord is not justified; (8) It is not the object of the provisions of Sec.10(3)(c) of the Act to weigh the hardship of the tenant as against the advantage of the landlord on delicate scales, giving the benefit of slight tilt in favour of the tenant; (9) when the tenant carries on business in three other places, if order of eviction is passed under Sec.10(3)(c) of the Act, it is not as though the life of the tenant would come to a grinding halt; (10) when the Rent Controller has gone into the question of relative hardship under Sec.10(3)(c) of the Act and rendered a finding to that effect and when the same is confirmed by the Appellate Authority without giving any specific finding with the regard to the comparative hardship, it does not mean that the judgment of the Appellate Authority is vitiated and bad; (11) Though there is no pleading on the relative hardship, arising on the requirement of additional accommodation, the court can apply its mind to that effect when there is some evidence on that aspect; (12) specific pleadings regarding comparative hardship are not mandatory requirement and (13) The emphasis under Sec.10(3)(c) of the Act is more on the duty of the authorities to record the findings with regard to relative hardship than on the pleadings.

42. In the light of the above legal principles, let me consider the facts of the present case.

43. The main crux of the argument of the learned Senior Counsel appearing for the revision petitioner is that the Rent Controller has not gone into the question of relative hardship which is mandatory and in such circumstances the matter is to be remanded to the Rent Controller for fresh disposal.

44. The respondent/landlord in RCOP No.517/1999 has clearly pleaded that his goods are stocked on the floor near the counter in the shop resulting in greatly hampering the movements of sales people as well as the customers. The respondent landlord has clearly stated in the petition that only recently the tenant has opened a branch in Usman Road, T.Nagar which is about 1-1/2 km from the petition premises and therefore the advantage accruing to the

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landlord would outweigh the disadvantage if any that may result to the tenant by vacating the petition premises. From the above pleadings in the petition, it cannot be said that there is no proper and sufficient pleadings in the petition filed under Sec.10 (3)(c) of the Act.

45. The tenant has also in his counter clearly stated that he invested crores of rupees for the development of the portion in the petition premises and he would be put to hardship if he is vacated. In the oral evidence, P.W.1, the son of the landlord has reiterated the same pleadings contained in the petition. P.W.1 has also stated that the revision petitioner/tenant has got 10 branches of similar business in Chennai alone and in fact he has got one more shop within 1-1/2 km from the petition premises.

46. R.W.1 who is an employee of the tenant in his deposition has categorically admitted that after filing the RCOP, the tenant has expanded his business in two other places and one of the branches of the same business is within 1-1/2 km from the petition premises. Further the landlord has filed a letter marked as Ex.P.14 in which he has asked the tenant to look for a suitable premises for his business in the same locality for rent.

47. In such circumstances, necessary pleadings and evidence were before the Rent Controller for consideration and the Rent Controller in her order dated 9.10.2001 rendered a finding that the landlord was bona fidely in requirement of additional accommodation. She further considered the contentions of the tenant that he spent a lot of money for decorations and rendered a finding that the money has been spent by him for decoration for his own benefit of expanding and augmenting the business and therefore there would not be any hardship to the tenant in this case. The Rent Controller has specifically considered the relative hardship by holding that as the tenant has opened two other shops of the same business, that too, within 1-1/2 kms. from the petition premises, the tenant would not lose any of his customers and therefore there is not much hardship that would be caused to the tenant.

48. On a reading of the order of the Rent Controller, I am unable to accept the contentions of the learned Senior Counsel appearing for the revision petitioner that the question of relative hardship has not been gone into at all by the Rent Controller. In fact, she did not go into these aspects and rendered a clear finding against the tenant and in favour of the landlord.

49. The Rent Control Appellate Authority also after re-appreciating and re-evaluating the evidence on record rendered a finding that the landlord requires the petition premises bonafidely

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for his additional accommodation. He has also given a clear finding that the hardship that would be caused to the landlord would be much more than the one that would be caused to the revision petitioner. When both the authorities rendered a concurrent findings based on evidence on record, that too, after keeping in mind the mandatory provisions, this court cannot interfere with those concurrent findings under Sec.25 of the Act 18/1960.

50. Hence the revision petition is liable to be dismissed as devoid of merits. Accordingly, the revision petition is dismissed and the orders of the authorities below are confirmed. No costs. C.M.P.No.4622/2006 is also dismissed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar, Small Causes Court, Chennai.104.

1 cc to M/s.N.V.R.Suresh, Advocate, SR.25524
1 cc to M/s.Siva suyambu, Advocate, SR.25430

ak (co)

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